

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

NANCY EZELL,

Petitioner,

v.

Case No. 04-C-413

ANA BOATWRIGHT¹,

Respondent.

**ORDER DENYING PETITION FOR A WRIT OF HABEAS CORPUS AS
UNTIMELY**

Nancy Ezell (“Ezell”) is a prisoner incarcerated pursuant to a Wisconsin state court judgment. Proceeding pro se, Ezell filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 on April 29, 2004. On May 4, 2004, the Honorable Charles N. Clevert dismissed Ezell’s petition without prejudice and permitted Ezell to file an amended petition using this district’s standard form for § 2254 cases within twenty-one days. On June 14, 2004, Judge Clevert vacated the judgment and reopened the case. On October 31, 2005, Judge Clevert screened the petition pursuant to Rule 4 of the Rules Governing Section 2254 Cases and dismissed Ezell’s double jeopardy claim but ordered the respondent to answer the petition as to Ezell’s three other grounds for relief. This case was reassigned to this court upon all parties consenting to the full jurisdiction of a magistrate judge.

¹ Pursuant to Federal Rule of Civil Procedure 25(d)(1), the court has updated to caption to replace Jodine Deppisch with Ana Boatwright, the current warden of Taycheedah Correctional Institution.

On December 5, 2005, the respondent answered the petition. The respondent argues that Ezell's petition is untimely under 28 U.S.C. § 2244(d)(1) and therefore should be dismissed. The pleadings on Ezell's petition are closed and the matter is ready for resolution.

On July 20, 1998 Ezell pled guilty to six felony counts of manufacture or delivery of cocaine and one count felony count of receiving stolen property. On June 1, 1999, she was sentenced to sixty-five years in prison for these offenses. (Ans., Ex. A.) Ezell appealed her conviction on the basis that the trial court had erroneously refused to allow her to withdraw her guilty pleas. On April 9, 2001, the Wisconsin Court of Appeals summarily affirmed Ezell's conviction. (Ans., Ex. D.) On July 18, 2001, the Wisconsin Supreme Court denied review. (Ans. Ex. E.)

On July 8, 2002, Ezell then filed a pro se motion for post-conviction relief in the circuit court alleging ineffective assistance of trial counsel, which was denied on July 10, 2002. (Ans., Ex. F.) Ezell appealed this decision and on March 26, 2003, the Wisconsin Court of Appeals summarily denied Ezell's appeal. On January 22, 2004, the Wisconsin Supreme Court denied Ezell's motion for an extension of time to file a petition for review.

Ezell's conviction became final under 18 U.S.C. § 2244(d)(1)(A) on October 16, 2001 when the deadline passed for filing a petition for certiorari with the United States Supreme Court following the Wisconsin Supreme Court's denial of her petition for review. Therefore, Ezell had one year from this date to file a petition for habeas relief in federal court. However, time during which state post-conviction motions are pending is excluded from this one-year deadline. On July 8, 2002, Ezell filed a post-conviction motion in state court. Thus the one-year clock stopped after nearly nine months of the one-year time limit had tolled. The one-year clock began to run again on April 25, 2003 when the thirty-day deadline for filing a petition for review with Wisconsin Supreme Court passed without Ezell filing such a petition. See Wis. Stat. § 809.62. It was more than a year

later that Ezell filed her present petition on April 29, 2004. Therefore, excluding time that post-conviction motions were pending in state court, Ezell's petition was not filed in this court nearly over a year and nine months after her conviction was final. Thus, under 28 U.S.C. § 2244(d)(1)(A), Ezell's petition is untimely and must be dismissed.

IT IS THEREFORE ORDERED that Ezell's petition for a writ of habeas corpus is **denied** as untimely under 28 U.S.C. § 2244(d)(1)(A). The clerk shall enter judgment dismissing Ezell's petition and this case with prejudice.

Dated at Milwaukee, Wisconsin this 29th day of May, 2007.

s/AARON E. GOODSTEIN
U.S. Magistrate Judge